

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**
Civil No. _____

The United States of America, on behalf of its agency, the Internal Revenue Service (“IRS”), and by its attorney, John R. Marti, Acting United States Attorney for the District of Minnesota, petitions this Court for an order enforcing an IRS administrative summons served on Respondent John K. Thornton. In support the United States avers as follows:

1. Jurisdiction over this judicial summons enforcement matter is conferred upon this Court by 26 U.S.C. §§ 7402(b) and 7604(a) to judicially enforce an Internal Revenue Service summons.

2. Jeffrey Wagner is an IRS Revenue Officer, employed in Small Business/Self-Employed Compliance Area, and is authorized to issue an IRS summons pursuant to the authority contained in 26 U.S.C. § 7602, and Treasury Regulations Section 301.7602-1, 26 C.F.R. § 301.7602-1. (Declaration of Revenue Officer Wagner ¶ 1.)

3. Respondent John K. Thornton resides or is found at 4128 Utica Ave. S., St. Louis Park, Minnesota 55419, within the jurisdiction of this court. (Wagner Decl. ¶ 4.)

4. Revenue Officer Jeffrey Wagner is conducting an investigation into the tax liability of John K. Thornton for the years: 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, and 2012. (Wagner Decl. ¶ 3.)

5. The respondent, John K. Thornton, is in possession and control of testimony and other documents concerning the above-described investigation.

6. On July 25, 2013, Revenue Officer Jeffrey Wagner issued an IRS summons directing Respondent to appear before Wagner on August 9, 2013, at 11:00 am at 1550 American Blvd. E. Suite 500 Bloomington, Minnesota, to testify and produce books, records, and other data described in the summons. An attested copy of the summons was left at the last and usual place of abode of Respondent by Revenue Officer Jeffrey Wagner, on July 25, 2013. (Wagner Decl. ¶¶ 5-6, Ex. A.)

7. On August 13, 2013, Revenue Officer Jeffrey Wagner issued an IRS summons directing Respondent to appear before Wagner on September 4, 2013, at 10:00 am at 1550 American Blvd. E. Suite 500 Bloomington, Minnesota, to testify and produce books, records, and other data described in the summons. An attested copy of the summons was personally served on Respondent by Revenue Officer Jeffrey Wagner, on August 13, 2013. (Wagner Decl. ¶¶ 7-8, Ex. B).

8. On August 6, 2013, Revenue Officer Jeffrey Wagner sent Respondent a letter rescheduling the appearance date for the first summons to August 13, 2013, at

Respondent's request. (Wagner Decl. ¶ 12, Ex. C)

9. On August 13, 2013, Respondent appeared in response to the summons. Respondent was accompanied by Marc Stevens and John Thomas, neither of which is licensed to represent Respondent in his tax matters. Respondent refused to take an oath and insisted the revenue officer prove constitution and tax code applied to him. Respondent refused to answer the revenue officer's questions or provide the requested documentation. (Wagner Decl. ¶ 13.)

10. On August 21, 2013, Petitioner sent Respondent a "last chance" letter, providing Respondent with the opportunity to comply with the summons issued to him by appearing and meeting with Revenue Officer Wagner on September 4, 2013 at 10:00 a.m. Respondent failed to appear. (Wagner Decl. ¶ 14, Ex. D)

11. Revenue Officer Jeffrey Wagner received letters from Respondent dated August 21, 2013, August 28, 2013, and September 5, 2013. (Wagner Decl. ¶ 16, Ex. E.)

12. The Respondent's refusal to comply with the summons continues to date. (Wagner Decl. ¶ 17.)

13. The books, papers, records, or other data sought by the summons are not already in possession of the Internal Revenue Service. (Wagner Decl. ¶ 18.)

14. All administrative steps required by the Internal Revenue Code for the issuance of a summons have been taken. (Wagner Decl. ¶ 19.)

15. It is necessary to obtain the testimony and examine the books, papers, records, or other data sought by the summons in order to properly investigate

Respondent's federal tax liability for the following years: 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, and 2012. (Wagner Decl. ¶ 20.)

16. No Justice Department referral, as defined by 26 U.S.C. § 7602(d)(2), is in effect with respect to Respondent for the years under investigation. (Wagner Decl. ¶ 21.)

17. In order to obtain enforcement of a summons, the United States must establish that the summons: (1) is issued for a legitimate purpose; (2) seeks information relevant to that purpose; (3) seeks information that is not already within the IRS's possession; and (4) satisfies all administrative steps required by the Internal Revenue Code. United States v. Powell, 379 U.S. 48, 57-58 (1964).

18. The attached Declaration of Revenue Officer Wagner establishes the government's *prima facie* showing under Powell.

WHEREFORE, the petitioner respectfully prays:

1. That this Court enter an order directing Respondent John K. Thornton to show cause, if any, why he should not comply with and obey the aforementioned summons and each and every requirement thereof.

2. That this Court enter an order directing Respondent John K. Thornton, to obey the aforementioned summons and each and every requirement thereof by ordering the attendance, testimony, and production of the books, papers, records, or other data as is required and called for by the terms of the summons before Revenue Officer Jeffrey Wagner or any other proper officer or employee of the Internal Revenue Service at such

time and place as may be fixed by Revenue Officer Jeffrey Wagner, or any other proper officer or employee of the Internal Revenue Service.

3. That the United States recover its costs in maintaining this action.
4. That the Court grant such other and further relief as is just and proper.

Dated: October 24, 2013

s/ D. Gerald Wilhelm
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